

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Grace H. Skelly,

Complainant,

vs.

ORDER OF DISMISSAL

Bonnie M. Gary,

Respondent.

On December 21, 2004, Grace Skelly filed a Complaint with the Office of Administrative Hearings alleging violations of Minnesota Statutes §§ 211A.01, subd. 3, 211A.10, and article VII, sections 1 and 6 of the Minnesota Constitution by Bonnie Gary. Ms. Skelly is a former mayor of Hammond, Minnesota. Ms. Gary is the current Hammond City Clerk. Ms. Skelly claims that Ms. Gary has not resided in Hammond for 30 days prior to the election for City Clerk on November 2, 2004.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on December 21, 2004, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint was sent by United States mail to the Respondent on December 21, 2004.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not set forth a prima facie violation of chapter 211A. In addition, because the jurisdiction of the OAH in these matters is limited to violations of Minnesota Statutes Chapters 211A and 211B, the Administrative Law Judge does not have jurisdiction to consider Ms. Skelly's allegation that Ms. Gary violated the Minnesota Constitution.

Based upon the Complaint and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Grace Skelly against Bonnie Gary is DISMISSED.

Dated: December 22, 2004

/s/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5 this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

MEMORANDUM

The Complaint alleges that Bonnie Gary purchased a house across the street from Ms. Skelly but has never resided “permanently” in this house for 30 days prior to the election on November 2, 2004, and has never stayed overnight at the house “except for a couple of times on a weekend.”

Ms. Skelly alleges that Ms. Gary has, by her conduct, violated article VII, sections 1 and 6 of the Minnesota Constitution, and Minn. Stat. §§ 211A.01 and 211A.07. Article VII, sections 1 and 6 of the Minnesota Constitution require that to be eligible to vote or to hold office, an individual reside in the precinct or district 30 days prior to the election. The Administrative Law Judge, however, does not have jurisdiction to consider whether an individual was eligible to vote or hold office due to the residency requirements set forth in the Minnesota Constitution. Instead, the Administrative Law Judge’s jurisdiction in campaign complaint matters is limited to considering only violations of Chapter 211A and 211B.

Minnesota Chapter 211A governs the Campaign Financial Reporting. Minn. Stat. § 211A.01, subd. 3, defines the term “Candidate” for purposes of chapter 211A. According to this section, a “candidate” means “an individual who seeks nomination or election to a county, municipal, school district, or other political subdivision office.” Even assuming that the facts as alleged in the complaint are true, they do not support finding a *prima facie* violation of Minn. Stat. § 211A.01.

Minn. Stat. § 211A.10 prohibits disqualified individuals from holding various positions. This statute reads as follows:

A candidate whose election to office has been set aside for a violation of this chapter may not be appointed, during the period fixed by law as the term of the office, to fill a vacancy that may occur in the office. A candidate or other individual who is convicted of a violation of this chapter may not be appointed, during the period fixed by law as the term of the office with respect to which the election was held and the offense was committed, to fill a vacancy in the office. An appointment to an office made contrary to this section is void.

A candidate or other individual who is convicted of a violation of this chapter is not qualified, during the period fixed by law as the term of office with respect to which the election was held and the offense was committed, to fill a vacancy in an office for which the legislature may establish qualifications under article XII, section 3, of the Minnesota Constitution.

Nothing in Ms. Skelly's complaint indicates that Ms. Gary is a disqualified individual who has been convicted of violating Chapter 211A or whose election has been set aside for a violation of this chapter. Consequently, Ms. Skelly's complaint fails to establish a prima facie violation of Minn. Stat. § 211A.10. Because the Complaint fails to identify a prima facie violation of Minnesota Chapter 211A, it is dismissed.

B.L.N.